

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREL R. FISHER,

Plaintiff,

v.

J. DOE,

Defendant.

Case No. 1:24-cv-00560-JLT-HBK

FINDINGS AND RECOMMENDATIONS TO  
DENY MOTION TO PROCEED *IN FORMA*  
*PAUPERIS* AND DISMISS CASE AS  
FRIVOLOUS<sup>1</sup>

14-DAY OBJECTION PERIOD

This matter comes before the court for its initial screening under 28 U.S.C. § 1915A. Darrel R. Fisher (“Plaintiff”) is civilly committed at the Federal Medical Center in Butner, North Carolina.<sup>2</sup> Plaintiff commenced this action by filing a pro se civil rights complaint under 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis* on May 10, 2024. (Doc. Nos. 1, 2). For reasons set forth below, the undersigned recommends the district court deny Plaintiff’s motion to proceed *in forma pauperis* and dismiss the Complaint as frivolous and lacking an arguable basis in fact or law.

**SCREENING REQUIREMENT**

A plaintiff may bring an action under 42 U.S.C. § 1983 to remedy violations of “rights,

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2023).

<sup>2</sup> See *Fisher v. United States*, Case No. 4:24-cv-00247-FJG (W.D. Mo.), Doc. No. 3 at 1.

1 privileges, or immunities secured by the Constitution and [federal] laws,” that were perpetrated  
2 by a person or entity, including a municipality, acting under the color of state law. 42 U.S.C.  
3 § 1983; *see also Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690-95 (1978). Because Plaintiff  
4 seeks to proceed *in forma pauperis*, the Court first reviews the Complaint to determine whether  
5 the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks  
6 monetary relief against a defendant who is immune from such relief. a defendant who is immune  
7 from such relief. 28 U.S.C § 1915(e)(2)(B).

8 A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can  
9 prove no set of facts in support of his or her claim that would entitle him to relief. *Johnson v.*  
10 *Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997), cert. denied, 552 U.S. 996 (1997). Dismissal for  
11 failure to state a claim in this context is governed by the same standard as dismissal under Federal  
12 Rule of Civil Procedure 12(b)(6). *Barren v. Harrington*, 152 F. 3d 1193, 1194 (9th Cir. 1998).  
13 As such, a complaint must contain sufficient factual matter to state a claim to relief that is  
14 “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A complaint is plausible on  
15 its face when it contains sufficient facts to support a reasonable inference that the defendant is  
16 liable for the misconduct alleged.” *Id.* At this stage, the court accepts the facts stated in the  
17 complaint as true. *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S. 738, 740 (1976). The Court does  
18 not accept as true allegations that are merely conclusory, unreasonable inferences, or unwarranted  
19 deductions. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Nor are legal  
20 conclusions considered facts. *Iqbal*, 556 U.S. at 678.

21 Because Plaintiff is proceeding pro se, the Court liberally construes the Complaint in the  
22 light most favorable to the Plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt*  
23 *v. L.A. County*, 339 F.3d 920, 925 (9th Cir. 2003). If a pleading could be cured by the allegation  
24 of other facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal  
25 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v.*  
26 *Department of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court to  
27 advise a litigant on how to cure the defects. Such advice “would undermine district judges’ role  
28 as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d

at 1131 n.13.

## BACKGROUND AND SUMMARY OF OPERATIVE PLEADING

Plaintiff initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983 on May 10, 2024. (Doc. No. 1, “Complaint”). The events giving rise to the Complaint took place in or near Mojave, California on an unspecified date in 1994. (Doc. No. 1 at 5). The Complaint identifies “J. Doe” as the sole Defendant. (*Id.*). The Complaint, although disjointed and difficult to understand, alleges that in 1994 at a California Highway Patrol weigh station on Highway 58 near Mojave, Defendant Doe “extorted” \$789<sup>3</sup> from Plaintiff. (*See generally id.*). Plaintiff was subsequently prosecuted in a Mojave courtroom based on unspecified acts by J. Doe. (*Id.* at 5). Plaintiff was then convicted in 1999 for an unspecified offense in Missouri and has been incarcerated for “26+ years.” (*Id.* at 10). “After 27 years, the Federal Government took off [Plaintiff’s] right leg above the knee leaving [him] tied to a wheelchair disabled, handicapped and forever scarred by the results of the criminal acts of J Doe et al in 1994 as a contributory factor in [his] plight.” (*Id.* at 5). Based on the above facts, the Complaint asserts a claim for “gunpoint seizure of property (contracts) impairing such contracts” and cites numerous federal laws and constitutional provisions, including Article I, Section 8, clause 13; Article I, Section 9, Clause 12, Article I, Section 10, Clause 1; the First, Fourth, Fifth, Seventh, and Fourteenth Amendments; 18 U.S.C. §§ 2, 242, 1503, 1512, 1951, 1952; and 42 U.S.C. §§ 1981, 1982, 1985(3). (Doc. No. 1-1 at 1). As relief, Plaintiff seeks \$200 million “in combined actual losses and punitive damages.” (Doc. No. 1 at 10).

## APPLICABLE LAW AND ANALYSIS

As an initial matter, Plaintiff’s Complaint violates Rule 8 of the Federal Rules of Civil Procedure because it does not provide a date with any specificity as to when any of the alleged violations occurred. *See Cervantes v. Elsen*, 2023 WL 3483292 (N.D. Cal. May 15, 2023) (allegations that the misconduct occurred from 2022 to 2023 was not a specific date); *Valenzuela v. Monson*, 2020 WL 1812043, at \*2 (D. Ariz. Apr. 8, 2020); *Fisher v. Washington State*

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<sup>3</sup> The Complaint variously refers to the amount as \$789, \$879, and \$869. (*Id.* at 5, 7, 9).

1 *Department of Corrections*, 2019 WL 1745086, at \*1 (W.D. Wash. Apr. 18, 2019) (the complaint  
 2 violated Rule 8 of the Federal Rules of Civil Procedure because, among other reasons, it did not  
 3 provide a specific date and therefore it did not “provide the defendants fair notice of what the  
 4 claim is . . .”); *Walker v. Muniz*, 2019 WL 2359229, at \*4 (N.D. Cal. Jun. 4, 2019) (referencing  
 5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) when explaining the specific date must  
 6 be alleged to meet the requirement of giving defendants fair notice); *McIntosh v. City of L.A.*,  
 7 2005 U.S. Dist. LEXIS 53641, at \*5 (C.D. Cal. Jul. 21, 2005) (citing *McHenry v. Renne*, 84 F.3d  
 8 1172, 1177-79 (9th Cir. 1996)). Other than citing the year 1994, the Complaint does not allege  
 9 when J. Doe held Plaintiff at gunpoint and took his property. Because the Complaint does not  
 10 allege any dates when the alleged constitutional violations occurred, the Court cannot reasonably  
 11 infer that any Defendant is liable for the misconduct alleged.

12 It would be futile to permit Plaintiff to amend the Complaint to cure the date because the  
 13 Complaint is factually frivolous. A “court need not accept as true . . . allegations that contradict  
 14 facts that may be judicially noticed by the court.” *Shwarz v. United States*, 234 F.3d 428, 435  
 15 (9th Cir. 2000). The Court takes judicial notice of *United States v. Fisher*, Case No. 4:99-cr-  
 16 00012-BCW-1 (W.D. Mo.). There, Plaintiff was found incompetent to stand trial and,  
 17 subsequently, was found not restorable to competency. *Id.*, Doc. Nos. 58, 62. Consequently,  
 18 Plaintiff was ordered committed to Federal Medical Center in Butner, North Carolina, where he  
 19 remains committed. *Id.* Thus, Plaintiff’s allegations that Defendant J. Doe caused him to be  
 20 subject to a criminal prosecution and imprisoned for more than 20 years is refuted by the record.

21 Moreover, Plaintiff’s Complaint is frivolous because the allegations in the Complaint are  
 22 essentially duplicative of claims that have summarily been dismissed by other district courts. *See*,  
 23 *e.g.*, *Fisher v. McKinney*, Case No. 2:24-cv-03284-DFS-AJR (C.D. Cal., May 1, 2024); *Fisher v.*  
 24 *McKinney*, Case No. 2:24-cv-03223-RGK-DFM (C.D. Cal. April 30, 2024); *Fisher v. Connor*,  
 25 Case No. 4:18-cv-00521-ODS (W.D. Mo., August 20, 2018); *Fisher v. Doe*, Case No. 4:18-cv-  
 26 00684-W-FJG-P (W.D. Mo., October 6, 2023); *Fisher v. Roberts*, Case No. 5:23-ct-03225-M-RJ  
 27 (E.D. N.C., November 7, 2023); *Fisher v. U.S. District Court*, Case No. 5:24-ct-03026-BO (E.D.  
 28 N.C., April 17, 2024); *Fisher v. Casey*, Case No. 4:23-cv-00733-FJG (W.D. Mo., October 13,

2023).

Additionally, Plaintiff's claims are subject to dismissal because the alleged wrongdoing occurred sometime in 1994. Therefore, his claims are barred by the applicable two-year statute of limitations. *See Whiting v. City of Cathedral City*, 735 F. App'x 927, 928 (9th Cir. 2018) (noting that for 42 U.S.C. § 1983 actions, the statute of limitations is dictated "by the forum state's statute of limitations for personal injury actions," which is two years in California); *see also Jones v. Bock*, 549 U.S. 199, 215 (2007) ("[i]f the allegations . . . show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim . . .").

Finally, given these deficiencies, leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (en banc) ("When a case may be classified as frivolous or malicious, there is, by definition, no merit to the underlying action and so no reason to grant leave to amend."). Thus, the undersigned recommends the Complaint be dismissed without leave to amend, and the action be dismissed with prejudice.

Accordingly, it is **RECOMMENDED**:

1. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 2) be **DENIED**.
2. Plaintiff's Complaint (Doc. No. 1) be dismissed with prejudice under § 1915 (e)(2)(B)(i), (ii) as frivolous and lacking an arguable basis in law or fact and/or for failing to state a claim.

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#### NOTICE TO PARTIES

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with a copy of these Findings and Recommendations, a party may file written objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned, "Objections to Magistrate Judge's Findings and Recommendations." The assigned District Judge will review these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party's

1 failure to file objections within the specified time may result in the waiver of certain rights on  
2 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

3  
4 Dated: June 7, 2024

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE